

CHAPTER 24
LOCATION AND CONSTRUCTION OF ELECTRIC POWER
GENERATING FACILITIES
[Prior to 10/8/86, Commerce Commission[250]]

199—24.1(476A) Authority, purpose, and policy.

24.1(1) Authority. The regulations contained herein are prescribed by the Iowa Utilities Board pursuant to authority granted the board in Iowa Code chapter 476A, relating to the location and construction of electric power generating facilities.

24.1(2) Purpose. The purpose of these regulations is to provide guidelines for proceedings for the determination, after consolidated hearing, whether the proposed construction of a major electric generation facility or significant alteration thereto should be issued a certificate of public convenience, use, and necessity required before such construction may commence and to state the procedures for determining compliance by the applicant with permit and licensing requirements of state regulatory agencies.

24.1(3) Policy.

a. These regulations reflect the following policies of the board:

(1) That a just and reasonable determination of whether the proposed construction is to be certificated requires a thorough, public development of information describing the present and future impacts a facility's construction and use would have on the public and the state.

(2) That the proceedings to certificate major electric power plants and significant alterations to such plants should be conducted in a manner which is as expeditious and economical as possible without compromising the board's fundamental obligation of protecting the public interest.

(3) That a consolidated hearing process in which the board, utilizing Iowa Code chapter 28E, enters into cooperative agreements pursuant to Iowa Code chapter 28E with the appropriate state agencies will facilitate through review of all state issues arising in the certification process and will reduce the time and expense in determining, to the extent necessary, the environmental, economic, and social effects of the facility's construction and use. Under the auspices of these 28E agreements, the board shall delegate to the various state agencies responsibility for the issuance of permits and licenses appropriate to the authority of the agency in assuring compliance with the steps in the certification process.

(4) That each party to a certification proceeding should guide its conduct in the proceeding by these considerations.

b. Each applicant for facility certification shall accept primary responsibility for qualitative and quantitative information it provides in support of its application. In further recognition of its responsibilities, each application shall disclose any and all information known to the applicant which would reasonably be expected to affect the board's certification decision.

c. Each party to the certification proceeding shall make every effort to avoid unnecessary delay in the proceeding to the end that a determination as to the issuance of a certificate will be timely made, thereby minimizing both the cost of the construction of a facility, and the cost of the electric energy generated at such facility.

199—24.2(476A) Definitions. As used in this chapter:

"*Acid Rain Program*" means the sulfur dioxide and nitrogen oxides air pollution control program established pursuant to Title IV of the Clean Air Act, 42 U.S.C. Section 7401, et seq., as amended by Pub. L. 101-549, November 15, 1990.

"*Act*" means Iowa Code chapter 476A entitled Electric Power Generators.

"*Agency*" means an agency as defined in Iowa Code section 17A.2(1).

"*Allowance*" means an authorization, allocated by the federal Environmental Protection Agency under the Acid Rain Program, to emit up to one ton of sulfur dioxide, during or after a specified calendar year.

“Applicant” means the person or persons who make an application for a certificate for a facility or an amendment to a certificate for a facility under the Act. For projects with more than one participant, the applicant may be that person designated by and acting on behalf of the participants.

“Application” means an application for a certificate or an amendment to a certificate submitted to the board pursuant to the Act.

“Board” means the utilities board.

“Certificate” means a certificate of public convenience, use and necessity issued by the board under the Act.

“Contested case proceeding” means the contested case proceeding before the board prescribed by section 4 of the Act.

“Duration curve” means a graphical representation of kilowatts plotted in descending order of magnitude against time intervals for a specified period.

“Facility” means any electric power generating plant or combination of plants at a single site, owned by any person, with a maximum generator nameplate capacity of 25 megawatts of electricity or more and those associated transmission lines connecting the generating plant to either a power transmission system or an interconnected primary transmission system or both. This term includes any generation addition that increases the total maximum generator nameplate capacity at one site to 25 megawatts or more, but does not include those transmission lines beyond the generation station’s substation.

“Integrated energy curve” means a graphical representation of kilowatts as a function of kilowatt hours showing the amount of energy represented under a duration curve, above any point of demand.

“Interested agency” means an agency, other than a regulatory agency, which the board in its discretion determines to have a legitimate interest in the disposition of the application.

“Intervenor” means a person who received notice under 24.6(2)“b,” “c,” “d,” “e” or “f” and has filed with the board a written notice of intervention, or, in all other cases, who, upon written petition of intervention is permitted in the proceeding pursuant to 199—subrule 7.2(8).

“Largest industrial users” means the largest industrial customers, whose collective kilowatt hour consumption comprises one-half of total large commercial and industrial sales or whose demand is 2000 kilowatts or larger.

“Load curve” means a graphical representation of kilowatts versus time of occurrence showing in chronological sequence the magnitude of the load for each unit of time of the period covered.

“Participant” means any person who either jointly or severally owns or operates a proposed facility or significant alteration thereto or who has contracted or intends to contract for a purchase of electricity produced by the subject facility.

“Party” means each person or agency named or admitted as a party, including the applicant, intervenors, and consumer advocate.

“Person” means individual, corporation, cooperative, government or governmental subdivision or agency, partnership, association or other legal entity.

“Regulatory agency” means a state agency which issues licenses or permits required for the construction, operation or maintenance of a facility pursuant to statutes or rules in effect on the date on which an application for a certificate is accepted by the board.

“Significant alteration” means:

- a. A change in the generic type of fuel used by the major electric generating facility; or
- b. Any change in the location, construction, maintenance, or operation of equipment at an existing facility that results in a 10 percent increase or more in the maximum generator nameplate capacity of an existing facility if the increase is more than or equal to 25 megawatts.

“Site” means the land on which the generating unit of the facility, and any cooling facilities, cooling water reservoirs, security exclusion areas, and other necessary components of the facility, are proposed to be located.

“*Site impact area*” means the area within the state of Iowa within a ten-mile radius of the intersection of the transverse center-line axis and longitudinal center-line axis of the generator, or, all such generators where the proposed facility includes multiple generators.

“*Zoning authority*” means any city or county zoning authority in whose jurisdictional area a proposed facility site or portion thereof is located.

199—24.3(476A) Form of application, place of filing.

24.3(1) *Form of application.*

a. The application, associated documents, or other papers filed with the board in a certification proceeding shall be printed or typewritten and reproduced on sheets of 8½ inches by 11 inches (except for foldouts and special exhibits) in loose leaf or equivalent replaceable sheet form with hard cover.

b. The information required by these rules shall be indexed and arranged in a sequential manner substantially similar to the outline form of the rules, with all material submitted categorized into the specific areas and sections set forth in the rules.

24.3(2) *Manner and place of filing.*

a. An applicant shall file the original and 20 copies of its application with the board by presentation or mailing to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319.

b. Within ten days of receipt of the application the Executive Secretary shall acknowledge in writing receipt of the application, but said acknowledgment shall not constitute acceptance of the application.

c. Within ten days of the receipt of application, the board shall forward copies thereof to each regulatory agency listed in the application. In addition, that part of the application responding to 24.4(1)“*a*” through “*c*” will be forwarded to such other agencies as the board deems appropriate, including the office of state archaeologist, the Iowa geological survey, the division of community action agencies of the department of human rights, and the office of historical preservation of the state historical society of Iowa as interested agencies, and also to the natural resource commission of the department of natural resources, the Iowa department of transportation, and the environmental protection division of the department of natural resources, if such have not been designated as regulatory agencies.

d. Any amendments to the application shall be filed in a manner similar to that required of the application. All information subsequently transmitted for purposes of inclusion in the application shall be by the issuance of appropriate amendments to the application which shall be in the form of page-for-page additions or substitutions properly identified as such.

199—24.4(476A) Application for a certificate—contents. Each person or group of persons proposing to construct a facility after January 1, 1977, or a significant alteration to a facility shall file an application for certificate of public convenience, use, and necessity with the board, unless otherwise provided by these rules. Any such person may file its application in stages. The applicant may file a portion of an application and, in conjunction therewith, a request that the board accept such portion of the application pursuant to subrule 24.5(3) and conduct a separate phase of the proceeding with respect to issues presented by such portion of the application to the extent permitted pursuant to 24.5(3) and 24.10(476A). The purpose of this rule is to elicit the development and presentation of information sufficient to adequately facilitate comprehensive evaluation of a proposed facility’s feasibility. Nothing in this rule shall be construed to limit or in any way restrict the amount or type of information relevant to the issues in a plant-siting adjudication. Any omission or deficiency in the filed information, which is known to the applicant, shall be clearly identified by the applicant with an explanation for the noted omission or deficiency. Applicant shall indicate whether the information omitted will be supplied at a later date and, if not, shall indicate the rationale for the omission. An application shall substantially comply with the following informational requirements:

24.4(1) In section 1, entitled, “General Information,” applicant shall include the following information:

a. Name, address, telephone number of the applicant and all other participants of the proposed facility at the time of filing, as well as the name of the person authorized to receive communications relating to the application on behalf of those persons.

b. A complete description of the current and proposed rights of ownership in the proposed facility and current or planned purchase power contracts with respect to the proposed facility.

c. A general site description including a legal description of the site location, a map showing the coordinates of the site and its location with respect to state, county, and other political subdivisions, and prominent features such as cities, lakes, rivers and parks within the site impact area. Applicant shall also provide a more detailed map showing the location of the facility perimeter, utility property, railroads and other transportation facilities, abutting and adjacent properties, cities, lakes, rivers, parks, other public facilities, cemeteries and places of historical significance within one mile of the site boundary.

d. A general description of the proposed facility including a description of the principal characteristics of the facility such as major components and such information as will generally acquaint the board with the significant features of the facility, including the capacity of the proposed facility in megawatts expressed by the contracted maximum generator nameplate MW rating, the net facility addition to the system in MW, by net to the busbar rating, and the portion (in MW) of the design capacity of the proposed facility which is proposed to be available to serve each participant’s service area, the number and type of generating units and the type of fuel used by each, primary fuel source for each such unit, the heat rate of each generating unit in Btu/kilowatt hour over the range of its operating capacity, the function of each generating unit in applicant’s generating system, a description of the general arrangement of major structures and equipment to provide the board with an understanding of the general layout of the facility, and a schedule for the facility’s construction and utilization including the projected date significant site alteration is proposed to begin and the projected date the facility is to be placed into service. For this purpose, a group of several similar generating units operated together at the same location such that segregated records of energy output are not available shall be considered as a single unit.

e. A general description of all raw materials, including fuel, used by the proposed facility in producing electricity and of all wastes created in the production process. In addition to describing the wastes created in the production process, the applicant shall determine annual expected sulfur dioxide emissions from the facility and provide a plan for acquiring allowances sufficient to offset these emissions. The applicant shall describe all transportation facilities currently operating that will be available to serve the proposed facility and shall describe any additional transportation facilities needed to deliver raw materials and to remove wastes.

f. Identification, general description and chronology of all financial and other contractual commitments undertaken or planned to be undertaken with respect to the proposed facility.

g. A general map and description of the primary transmission corridors and the approximate routing of the rights-of-way in the vicinity of settled areas, parks, recreational areas, and scenic areas.

h. A statement of total cost to construct the proposed facility. Such cost shall include, but shall not be limited to, the cost of all electric power generating units, all electric supply lines within the facility site boundary, all electric supply lines beyond the facility site boundary with voltage of 69 kilovolts or higher used for transmitting power from the facility to the point of junction with the distribution system or with the interconnected primary transmission system, all appurtenant or miscellaneous structures used and useful in connection with said facility or any part thereof, and all rights-of-way, lands or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance or operation of said facility.

i. The names and addresses of those owners and lessees of record or real property identified in 24.6(2)“*d*” and “*e*.”

24.4(2) In section 2, entitled, “Regulatory Requirements,” applicant shall include the following:

a. All information related to the regulatory agency and zoning authority requirements for permits or licenses necessary to construct, operate, and maintain the facility. Any deficiencies in this information shall be clearly identified, and a schedule for submitting the omitted information shall be presented.

b. A listing of every state agency from which any approval or authorization concerning the proposed facility is required and a listing of zoning authorities.

c. Information equivalent to the information required in the rules and application forms of such state regulatory agencies and zoning authorities.

24.4(3) In section 3, entitled “Current system information,” the applicant shall include the following:

a. A specific and complete description of all participants’ operating generating units in all participants’ operating electric power generating stations. Such description shall include, but shall not be limited to, installed generating capacity including nameplate, net to the busbar ratings and net to the distribution system of each unit in megawatts, primary fuel types and sources for each unit, the heat rate of each unit in Btu/kWh over the range of operating capacity, date placed in service and projected retirement date. Applicant shall also describe all other sources of electricity available to serve participants’ service area. Description of other sources of electricity shall include, but shall not be limited to, total kilowatts and kilowatt hours available in each quarter of the year. For this purpose, a group of several similar generating units operated together at the same location such that segregated records of energy output are not available shall be considered as a single unit.

b. For each quarter of the ten years preceding the date of application, system load level information in the form of duration curves, load curves and integrated energy curves. Supporting data for each curve shall be supplied in tabular form.

c. For each quarter of the ten years preceding the date of application, in each participant’s service area, the number of customers in each customer class, the average customer consumption in each customer class and the average price per kilowatt hour for each customer class. Data for the largest industrial users shall be further classified according to two digit Standard Industrial Classification (SIC) Codes. Applicant must indicate whether any information provided under this subsection constitutes a clearly unwarranted invasion of personal privacy or trade secrets required to be kept confidential by the board under the Iowa Administrative Procedure Act. Applicant shall provide capital costs and operating and maintenance expenses per kilowatt hour by generating station for each quarter of the ten years preceding the date of application.

d. For purposes of this subsection, the period chosen for presentation of quarterly data shall be any appropriate three-month interval, selected on the basis of the shape of the load curve or any other load characteristics of the installed generating capacity.

24.4(4) *In section 4, entitled “Future system projections,” the applicant shall include the following:

a. (1) A description of each participant’s projected installed generating capacity for each year from the date of application through the proposed facility’s life. Such description shall include but not be limited to the primary type of fuel projected to be used by each generating unit in the system and the proportion each generating unit is projected to contribute to total installed generating capacity.

(2) A description of other sources of electricity available or likely to be available to supply participants’ service areas. Such description shall include, but shall not be limited to, total kilowatts and kilowatt hours available for each year from the date of application through the proposed facility’s life.

b. (1) Identification and description of participants’ existing and planned programs designed to conserve energy. Such description shall include, but shall not be limited to, estimated kilowatt hours saved for each year from the date of application through the proposed facility’s life.

(2) An analysis of the effect construction of the facility would have on the demand for electricity. This analysis shall include, but shall not be limited to, all anticipated changes in demand due to community developments induced by construction of the facility.

(3) An identification of the forecast methodology used by applicant including a discussion of the analytical techniques used, the manner in which the techniques are related to the forecast, and the confidence levels and expected range of accuracy for the components of the forecast.

(4) A projection of system load levels in the form of duration curves, load curves and integrated energy curves, for each year from the date of application through the proposed facility’s life. Supporting data for each curve shall be supplied in tabular form.

c. For each participant’s service area, a projection of the number of customers in each customer class, average customer consumption by customer class and average price per kilowatt hour for each year from the date of application through the proposed facility’s life. Applicant shall provide projections of capital costs and operating and maintenance costs per kilowatt hour for each station in the participants’ system and for the proposed facility for each year from the date of application through the proposed facility’s life. Average price per kilowatt hour may be stated as an aggregate index of all rate classifications.

24.4(5) *In section 5, entitled “Economic evaluation and feasibility,” the applicant shall include the following:

a. Estimated maximum, minimum and expected cash inflows and maximum, minimum and expected cash outflows associated with the facility in each year from the date of application throughout the facility’s life.

b. Cost of capital projections for each year from the date of application throughout the facility’s life.

c. An overall evaluation of the facility using conventional capital budgeting techniques. The techniques used must include, but not be limited to, net present-value calculations employing any appropriate discount rate and internal rate of return calculations. Applicant must also provide a graphical present value profile indicating net present values for various discount rates. Applicant must explicitly evaluate, through sensitivity analysis, simulation or other appropriate method, the relative degree of uncertainty associated with estimated data for each year.

d. A discussion of the economic advantages and disadvantages of alternative sources of power generation, alternative cooling water heat rejection methods, alternative cooling water sources and alternative emission control methods.

*Objection, see filed rules published IAC Supp. 3/9/77, 5/4/77, 7/13/77

24.4(6) In section 6, entitled “Community impact,” the applicant shall include an identification and analysis of the effects the construction, operation and maintenance of the proposed facility will have on the site impact area including, but not limited to, the following:

- a.* A forecast of the permanent impact of the construction, operation, and maintenance of the proposed facility on commercial and industrial sectors, housing, land values, labor market, health facilities, sewage and water, fire and public protection, recreational facilities, schools and transportation facilities.
- b.* A forecast of any temporary stress placed upon housing, schools or other community facilities as a result of a temporary influx of workers during the construction of the proposed facility.
- c.* A forecast of the impact of the proposed facility on property taxes of affected taxing jurisdictions. The forecast shall include the effects on property taxes caused by all community development proximately related to the construction of the proposed facility.
- d.* A forecast of the impact on agricultural production and uses.
- e.* A forecast of the impact on open space areas and areas of significant wildlife habitat. Such forecast shall include identification and description of the impact of the proposed facility on terrestrial and aquatic plants and animals.
- f.* A forecast of the impact on transportation facilities.
- g.* A forecast of the impact on cultural resources including known archaeological, historical and architectural properties which are on, or eligible for, the national register of historic places.
- h.* A forecast of the impact on landmarks of historic, religious, archaeological, scenic, natural or other cultural significance. Such information shall include an assessment of the aesthetic impact of the proposed facility, applicant’s plans to coordinate with the state historical preservation office and office of state archaeologist to reduce or obviate any adverse impact; and the applicant’s plans to coordinate with the state office of disaster services in the event of accidental release of contaminants from the proposed facility.

24.4(7) Site selection methodology. In section 7, entitled “Site selection methodology,” applicant shall present information related to its selection of the proposed site for the facility. Such information shall include the following:

- a.* The general criteria used to select alternative sites, how these criteria were measured and weighted, and reasons for selecting those criteria.
- b.* An identification of at least two alternative sites considered by applicant for the facility and discussion of the applicability of the site selection criteria to those sites.
- c.* A discussion of the applicability of the site selection criteria to the proposed site and its advantages over the other alternative sites considered by applicant.
- d.* A discussion of the extent to which reliance upon eminent domain powers could be reduced by use of an alternative site, alternative generation method or alternative waste handling method.

199—24.5(476A) Initial board review: Application acceptance.

24.5(1) Upon the filing of the application or a portion of the application, the board and the appropriate regulatory agencies shall make an initial review thereof to determine if it is in substantial compliance with the requirements of rule 24.4(476A) which pertain thereto. If any significant deficiencies, including those noted by applicant, are determined to exist in the application, or such portion of the application by either the board or regulatory agency, the board shall notify the applicant specifying such deficiencies, within 45 days from the date of the filing of the application or such portion of the application.

24.5(2) Applicant shall have 30 days from notification of deficiencies to amend or request, for good cause, a reasonable extension of time to amend. In the event the applicant fails to amend within the time allowed or, after amendment, the application or portion thereof filed is not in substantial compliance with the requirements of rule 24.4(476A) which pertain thereto, the board may reject the application or such portion thereof. Such rejection shall constitute final agency action, but shall not preclude reapplication.

24.5(3) If the application or portion thereof, after amendment or otherwise, is in substantial compliance with the requirements of rule 24.4(476A) which pertain thereto, the board shall, within 45 days of the filing of the application or portion thereof or amendment thereto, accept the application or portion thereof and set the time and place for hearing as provided in rule 24.6(476A); provided, however, that upon acceptance of a partial application, the board may order separate proceedings on particular phases of the application, pursuant to rule 24.10(476A), where such partial application permits a finding to be made with regard to any of the facility siting criteria contained in subrule 24.11(2).

199—24.6(476A) Procedural schedule.

24.6(1) Upon acceptance of the application, the board shall establish a schedule for the certification proceeding which shall include:

- a.* A prehearing conference to be held in accordance with 24.8(476A), no sooner than 45 days after acceptance of the application.
- b.* A hearing to be commenced in accordance with 24.9(476A), no earlier than 90 days nor later than 150 days from the date of acceptance. This hearing shall be conducted in the county in which the construction of the greater portion of the facility is being proposed.
- c.* Provision for the publication of notice of the schedule for the prehearing conference, and the hearing held by the board in the form provided in Iowa Code section 17A.12(2), which notice shall be published in a newspaper of general circulation in each county in which the proposed site is located once each week for two consecutive weeks with the second publication being no later than 30 days after acceptance of the application.

24.6(2) The board shall serve notice of the acceptance of the application and proceeding schedule upon the following:

- a.* All regulatory agencies, including Iowa department of transportation, and environmental protection division and natural resource commission of the department of natural resources.
- b.* Interested agencies as determined by the board, including the Iowa geological survey, office of state archaeologist, and the office of historical preservation of the state historical society of Iowa.
- c.* County and city zoning authorities from the area in which the proposed site is located; and
- d.* All owners of record of real property located within one mile of the intersection of the transverse center-line axis and longitudinal center-line axis of the generator, or all such generator axis intersections where the proposed facility includes multiple generators, and all owners of record of real property located within 1000 linear feet of the proposed boundary, but outside any such one-mile radius.
- e.* All lessees of record of real property of one acre or more located within the site boundary or within 1000 linear feet outside of the proposed site boundary.
- f.* Other interested persons as determined by the board.

24.6(3) Status of notice recipient.

- a.* Those receiving notice under 24.6(2)“*a*” shall be deemed parties to the proceeding.
- b.* Such notice provided under 24.6(2)“*b*,” “*c*,” “*d*,” “*e*” or “*f*” shall state that the recipient shall have the right to become an intervenor upon duly filing written notice of intervention.

199—24.7(476A) Informational meeting.

24.7(1) Place of meeting. Not less than 30 days prior to the filing of an application the applicant shall hold an informational meeting in the county of the proposed site for the facility. In the event the proposed site is in more than one county, such meeting shall be in that county containing the greatest portion of the proposed facility site.

24.7(2) Meeting facilities. The applicant shall be responsible for all negotiations and compensation for a suitable meeting place facility to be used for the informational meeting, including a building or facility which is in compliance with the requirements of the Americans With Disabilities Act of 1990, parking facilities, and electronic voice amplification equipment, if necessary. Reasonable effort shall be made to select a building or facility that conforms to the access requirements of Iowa Code section 104A.3, subsections 2, 3, and 4.

24.7(3) Location. The location of the meeting shall be reasonably accessible to all persons which may be affected by the granting of the certificate.

24.7(4) Board approval. Board approval shall be obtained for the proposed informational meeting date, time, and location.

24.7(5) Personnel. The prospective applicant shall provide qualified personnel to speak for the applicant in matters relating to the following:

- a. Utility planning which has resulted in the proposed construction.
- b. When the facility or significant alteration will be constructed.
- c. In general terms the physical construction, appearance and location of major structures with respect to proposed property lines.
- d. In general terms the property rights which the applicant shall seek including purchase, option to buy, and easement.
- e. Procedures to be followed in contacting affected parties for specific negotiations in acquiring property rights.
- f. Methods and factors used in arriving at offered compensation.
- g. Manner in which payments are made including discussion of conditional easements, signing fees and time of payment.
- h. Other factors or damages for which compensation is made.
- i. If the undertaking is a joint effort, other participants shall be represented at the informational meeting by qualified personnel designated to speak for them.

24.7(6) Conduct of the meeting. A member of the board, or a hearing examiner designated by the board shall serve as the presiding officer at the meeting and present an agenda for such meeting which shall include a summary of the legal rights of affected legal landowners. No formal record of the meeting is required. The meeting shall not be considered adversarial in nature, but rather shall have as its purpose the presentation by the applicant of its proposal, the furnishing of an opportunity for interested members of the public to raise questions regarding the proposal, and an opportunity for the applicant to respond.

24.7(7) Notice. At least one week prior to the time set for the informational meeting, the applicant shall cause to be published a notice of such meeting in a newspaper of general circulation in each county containing a portion of the proposed site impact area. The notice of the informational meeting shall contain the following statement: Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made. Proof of such notice shall be provided to the board by applicant. Additional notice shall be made through press release to all newspapers of general circulation in each county containing a portion of the proposed site impact area and, as deemed appropriate by the board, electronic media.

This rule is intended to implement Iowa Code sections 476A.2 and 476A.12.

199—24.8(476A) Prehearing conferences.

24.8(1) The board will direct the parties or their counsel to appear before the board at one or more prehearing conferences to be held at such times as the board deems appropriate. The purposes of a prehearing conference will be:

- a. To identify and clarify the issues.
- b. To cause the parties to consider stipulations and admissions of fact and of the contents and authenticity of documents and records to avoid unnecessary proof.

- c. To facilitate establishment of an appropriate hearing and briefing schedule.
- d. To consider such other matters as may expedite or simplify the proceeding or in any other manner aid in the orderly disposition thereof.

24.8(2) Within ten days of the conclusion of a prehearing conference, the board will enter an order which recites the action taken at the conference. Except to such extent as it may otherwise be provided or is subsequently modified, the order shall control the subsequent course of the proceeding.

199—24.9(476A) Hearing procedure.

24.9(1) General. The proceedings conducted by the board pursuant to this chapter shall be treated in the same manner as a contested case pursuant to the provisions of Iowa Code chapter 17A. Except where contrary to express provisions below, the hearing procedure shall conform to the board's rules of practice and procedure, 199—Chapter 7, IAC.

24.9(2) Intervention.

a. *Notice of intervention.* An agency not receiving notice pursuant to 24.6(2)“b” may become a party to the contested case proceeding by filing with the board an original and ten copies of a notice of intervention. Such notice shall contain a statement of the jurisdiction or interest of the particular agency with respect to the proposed facility.

b. *Petition to intervene.* Any other person wishing to become a party to the contested case proceeding may request to intervene in the proceeding by petition to intervene filed at least 30 days prior to the date of the scheduled hearing, but not afterward except for good cause shown. Such application shall specify the issues in which petitioner may contest before a regulatory agency or otherwise. A petition to intervene shall substantially comply with the form prescribed in 199—subrule 2.2(10). The original and ten copies of the petition shall be filed with the board. All other parties to the proceeding shall have the right to resist or respond to the petition to intervene within seven days subsequent to the petitioner's service thereof.

c. *Board discretion.* The board may, in its discretion, grant or deny such petition or may permit intervention by the petitioner limited to particular issues or to a particular phase or stage of the proceeding. The board shall, in exercising its discretion, consider the substantiality of the petitioner's rights allegedly affected by the granting or denial of the application and whether granting the intervention will unduly delay the proceeding or have no probative value to the proceeding. The granting of any petition to intervene shall not have the effect of changing or enlarging the issues specified in the board's notice of hearing or any prehearing order of the board unless the board shall, on motion, amend the same.

24.9(3) Appearance. If any regulatory agency fails to appear of record in the contested case proceeding conducted by the board, the board shall conclusively presume that the facility meets the regulatory agency's permit and licensing requirements and the regulatory agency shall immediately issue any license or permit required for the construction, operation, or maintenance of the facility.

24.9(4) Discovery. Discovery may begin after the commencement of the contested case proceeding. It will not be grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

24.9(5) Application for rehearing. All applications for rehearing will be made and processed in accordance with Iowa Code section 17A.16(2). Applications for rehearing after decision made by the board must state the specific grounds upon which the application is based and must specify such findings of fact and conclusions of law and such terms or conditions of any certificate or amendment to certificate as are claimed to be erroneous, with a brief statement of the grounds of error. An application for rehearing shall substantially comply with the form prescribed in board 199—subrule 2.2(13). The original and ten copies of the application shall be filed with the board.

24.9(6) *Service of copies.* Applicant shall make available for public inspection one copy of the entire application and any amendments thereto in the main offices of each participant and the public library in the county seat of each county containing any portion of the site impact area. Any person, other than a regulatory agency, who is properly a party to the proceeding, may receive from the applicant a full copy of the application or any sections thereof, but shall pay the applicant's cost for the reproduction of such application or section thereof, such cost not to exceed \$150. All petitions to intervene, notices of intervention, written motions, written resistances and responses, and applications for rehearing, and all other pleadings including briefs, shall be served by the party filing same upon all parties as of the date of filing and shall be accompanied by proof of service upon such parties.

199—24.10(476A) Separate hearings on separate issues.

24.10(1) *By motion.* The board, upon its own motion or on the motion of the applicant, may order separate phases on particular issues of the proceeding. Each phase shall be addressed to issues involved in applying one or more of the facility siting criteria set forth in board subrule 24.11(2) and shall result in board findings with respect thereto.

24.10(2) *By agreement.* In accordance with agreements made pursuant to Iowa Code chapter 28E, with regulatory agencies, the board shall establish separate phases of the hearing process to determine whether the proposed facility will conform to the permit and licensing requirements of the regulatory agencies.

24.10(3) *Procedure.* Each such hearing phase shall be conducted in conformance with the requirements of 24.9(476A) or other rules of practice and procedure designated in the applicable chapter 28E agreement.

24.10(4) *Criteria.* In no event shall a certificate be issued unless and until the board has made appropriate findings with respect to all of the facility siting criteria set forth in board subrule 24.11(2).

199—24.11(476A) Certification decision.

24.11(1) *Issuance of decision.* Upon the close of the record in the proceeding, the board shall expeditiously render a written decision with complete determinations as to the facility siting criteria or portion thereof under consideration, other necessary findings of fact or conclusions of law necessary to support the board's decision.

24.11(2) *Facility siting criteria.* In rendering its certification decision, the board shall consider the following criteria:

a. Whether the service and operations resulting from the construction of the facility are required by the present and future public convenience, use and necessity. Such determination shall include:

(1) The need for power based on electrical energy demands of each participant's service area and interconnected power pool considering current and projected impacts of energy conserving programs, policies and technology;

(2) The advantages, disadvantages, and risks associated with the proposed facility as compared to the advantages, disadvantages, and risks associated with alternative methods of meeting the established electric energy demand; and

(3) Economic advantages, disadvantages, and risks to the public of the replacement of or the placing on reserve of existing generation units.

b. Whether the construction, maintenance, and operation of the proposed facility will cause minimum adverse land use, environmental, and aesthetic impact and are consonant with reasonable utilization of air, land, and water resources for beneficial purposes considering available technology and the economics of available alternatives. Such determination shall include:

(1) Whether all adverse impacts attendant the construction, maintenance and operation of the facility have been reduced to a reasonably acceptable level;

(2) Whether the proposed site represents a reasonable choice among available alternatives from a technical, social, and economic standpoint;

(3) Whether the proposed generating plant represents a reasonable choice among available alternatives for meeting the power from a technical, social, and economic standpoint;

(4) Whether the proposed facility complies with applicable city, county or airport zoning requirements, and if not, whether the location of the proposed facility at the proposed site is reasonably justified from an economic, technical, and social standpoint.

c. Whether the applicant is willing to perform the services resulting from the construction of the facility and to construct, maintain, and operate the facility pursuant to the provisions of the certificate and the Act.

d. Whether the proposed facility meets the permit and licensing requirements of regulatory agencies.

e. Requirement for good engineering practice.

(1) Whether the facility will be constructed, maintained and operated in accord with accepted good engineering practice in the electric industry to assure, as far as reasonably possible, continuity of service, and safety of persons and property.

(2) The utility shall use the applicable provisions in the publications listed below as standards of accepted good practice unless otherwise ordered by the board:

(a) Iowa Electrical Safety Code, as defined in IAC[199], Chapter 25.

(b) Rescinded, effective 1/12/83.

(c) National Electrical Code ANSI-C1-1975.

(d) Operation and Maintenance of Turbine Generators-ANSI standard C50.30-1972.

(e) Power Piping-ANSI standard B31.1-1977.

(f) Nuclear Power Piping-ANSI standard B31.7-1969 and addendum thereto including B31.7a-1972, B31.7b-1971 and B31.7C-1971.

f. Whether each participant, if a public utility as defined in Iowa Code section 476.1, has complied with Iowa Code section 476A.6(4).

g. Whether each participant, if a public utility as defined in Iowa Code section 476.1, has demonstrated to the board that the utility has considered sources for long-term electric supply from either purchase of electricity or investment in facilities owned by other persons.

h. Whether each participant, if a public utility as defined in Iowa Code section 476.1, has complied with Iowa Code section 476A.6(5).

24.11(3) Amendment. If the board finds that the application and record in the proceeding does not support affirmative findings with regard to these criteria, the board will, in its order, specify any deficiencies determined to exist. The applicant shall have 30 days from the notification of the deficiencies to amend or, for good cause, to request a reasonable extension of time to amend the application or to request reopening of the record to correct the deficiencies, or both.

24.11(4) Denial. In the event the applicant fails to amend in a timely fashion, or after amendment or reopening the record, or both, the board is still unable to make an affirmative finding, the board will deny the application. Applicant may request rehearing on such denial in accordance with Iowa Code section 17A.16(2).

24.11(5) Application approval. If the board finds, after amendment or record reopening, or both, or otherwise, that affirmative findings are appropriate, the board shall approve the application and, in accordance with 24.13(476A) prepare a certificate of public convenience, use, and necessity for construction of the facility.

199—24.12(476A) Site preparation.

24.12(1) In the event no certificate has been issued after 90 days from the commencement of the hearing, the board may permit applicant to begin work to prepare the site for construction of the facility. Any activities conducted pursuant to this section shall have no probative value to the board's decision concerning the actual issuance of a certificate.

24.12(2) In the event the board denies an application for a certificate or an amendment to a certificate, applicants who have received permission to begin site preparation pursuant to 24.12(1), shall restore the site, in accordance with the board order denying the application.

199—24.13(476A) Issuance of a certificate.

24.13(1) General. The certificate shall authorize construction, maintenance, and operation of the facility on the site designated in the certificate according to the following:

- a.* Those terms and conditions imposed by the board and stated in the certificate.
- b.* Those terms and conditions in licenses and permits issued by regulatory agencies before and during the proceeding.
- c.* Those terms and conditions which have been specifically recommended by regulatory agencies in the proceeding and declared by those regulatory agencies or the board as being necessary for the applicant to comply with requirements of licenses or permits then sought but not yet issued.

24.13(2) Eminent domain. The certificate shall give the applicant the power of eminent domain to the extent and under such conditions as the board approves, prescribes, and finds necessary for the public convenience, use, and necessity, proceeding in the manner of works of internal improvement under Iowa Code chapter 472.

199—24.14(476A) Exemptions from certification application; application for amendment for certificate: Contents.

24.14(1) Application for amendment.

a. Each person or group of persons proposing a significant alteration to any facility which was constructed pursuant to a certificate of public convenience, use and necessity issued by the board, shall file an application for an amendment to a certificate in lieu of an application for a certificate of public convenience, use, and necessity.

b. Each person or group of persons proposing a significant alteration to any facility which was not constructed pursuant to a certificate of public convenience, use, and necessity issued by the board must file an application for such certificate unless:

- (1) The facility has not attained full commercial rating and has not operated in excess of 80 percent of its maximum nameplate megawatt rating for ten hours daily for 45 consecutive days; and
- (2) The significant alteration requires no more land than was required for the facility, is within the scope of publicly announced plans for the facility's construction and entails no additional contracts for major components than those let for the facility.

24.14(2) All applications for amendment to a certificate shall be filed in accordance with 24.3(476A) and shall include:

- a.* A complete identification and discussion of the nature of the amendment proposed; and
- b.* A complete enumeration of the effects the amendment has on the accuracy of the information contained in the application for a certificate of public convenience, use and necessity filed pursuant to 24.4(476A).

24.14(3) Upon board acceptance of the application in accordance with 24.14(1), the board shall establish a hearing schedule. At the board's discretion, the informational meeting and prehearing conference for this proceeding may be waived. Notice shall be in accordance with 24.6(2).

24.14(4) In the consideration of an application for a certificate, pursuant to 24.14(1) "*b*," or amendment to a certificate, pursuant to 24.14(1) "*a*," for an addition of less than 100 megawatts in the maximum generator nameplate capacity of the facility, there shall be a rebuttable presumption that the decision criteria of 24.11(2) are satisfied.

24.14(5) Amendment to a certificate. In determining whether an amendment to a certificate will be issued to the applicant, the board will be guided by the criteria set forth in 24.11(2) to the extent applicable and appropriate.

This rule is intended to implement Iowa Code sections 17A.3, 474.5, 476.1, and 476.2.

199—24.15(476A) Assessment of costs. The applicant for a certificate, or an amendment to a certificate, shall pay all the costs and expenses incurred by the board in reaching a decision on the application including the costs of examinations of the site, the hearing, publishing of notice, board staff salaries, the cost of consultants employed by the board, and other expenses reasonably attributable to the proceeding.

This rule is intended to implement Iowa Code chapter 476A and sections 17A.3, 474.5, 476.1, and 476.2.

199—24.16(476A) Waiver. The board, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this chapter for facilities with a maximum nameplate generating capacity of 100 megawatts or less. In determining whether the public interest would not be adversely affected, the board will consider the following factors:

1. The purpose of the facility.
2. The type of facility.
3. If the facility is for the applicant's own needs, whether there are plans to sell excess capacity and, if so, to whom.
4. If the applicant is other than a utility, the effect of the facility on any utility currently serving the applicant.
5. If the applicant is other than a utility, the effect of the facility on the customers of the utilities serving the applicant.
6. The effect of the facility on existing transmission systems.
7. Any other relevant factors.

This rule is intended to implement Iowa Code sections 476A.1, 476A.2, 476A.6, and 476A.15.

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